

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHRYN TOWNSEND GRIFFIN, THE ESTATE
OF CHERRIGALE TOWNSEND and THE HELEN
CHRISTINE TOWNSEND MCDONALD TRUST

Plaintiffs,

-against-

EDWARD CHRISTOPHER SHEERAN, p/k/a ED
SHEERAN, ATLANTIC RECORDING
CORPORATION, d/b/a ATLANTIC RECORDS,
SONY/ATV MUSIC PUBLISHING, LLC, and
WARNER MUSIC GROUP CORPORATION, d/b/a
ASYLUM RECORDS

Defendants.

ECF CASE

17-cv-5221 (LLS)

**DECLARATION OF DONALD S.
ZAKARIN IN SUPPORT OF
DEFENDANTS' EIGHTH
MOTION *IN LIMINE***

I, DONALD S. ZAKARIN, declare as follows:

1. I have personal knowledge of, and am fully familiar with, the facts set forth in this Declaration, which I respectfully submit in support of the Eighth Motion *In Limine* filed by Defendants Edward Christopher Sheeran (“Sheeran”), Atlantic Recording Corporation (“Atlantic”) and Sony/ATV Music Publishing LLC (n/k/a Sony Music Publishing (US) LLC) (“SMP,” together with Atlantic and Sheeran, the “Defendants” and each a “Defendant”), which seeks an Order:

- (i) precluding Plaintiffs from arguing – or offering any testimony or “evidence” – that the selection and arrangement of unprotectable elements in *Let’s Get It On* (“LGO”) includes the composition’s key signature of E flat major, as set forth in their Proposed Finding of Fact No. 1 in the Liability Pretrial Order (“Liability PTO”);
- (ii) precluding Plaintiffs from offering any testimony or “evidence” that compares the *Let’s Get It On* deposit copy (“Deposit Copy”) to the Marvin Gaye sound recording of *Let’s Get It On* (“LGO Sound Recording”), as set forth in their Proposed

Findings of Fact Nos. 9, 10 and 11 in the Liability PTO;

- (iii) precluding Plaintiffs from offering any testimony or “evidence” that addresses the purported bass line or drum part in *Thinking Out Loud* (“TOL”) or that otherwise compares those elements in TOL to LGO, as set forth in their Proposed Findings of Fact Nos. 3, 13 and 14 in the Liability PTO; and
- (iv) excluding Plaintiffs’ Proposed Exhibits 103, 108 and 128.

2. A true copy of the Liability PTO, which includes Plaintiffs’ Proposed Findings of Fact, is annexed as Exhibit 1.

3. True copies of Plaintiffs’ Proposed Exhibits 103, 108 and 128 are annexed, respectively, as Exhibits 2-4.

4. True excerpts of Dr. Stewart’s deposition taken in this action are annexed as Exhibit 5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 15, 2023



DONALD S. ZAKARIN